APPENDIX A

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

In the Matter of F. P. NEWPORT CORPORATION, LTD., a corporation, Bankrupt	))))	In Bankruptcy No. 25308-M

FILED May 3, 1954

At 30 Min. past 4 o'clock P. M.

HUGH L. DICKSON, Referee

....., Clerk

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER AUTHORIZING SALE OF REAL AND PERSONAL PROPERTY AND CONFIRMING SALE OF REAL AND PERSONAL PROPERTY TO R. T. COLTER AND ROBBIE E. COLTER HIS WIFE, AS JOINT TENANTS.

Paul W. Sampsell, the Trustee in bankruptcy of this estate, having filed herein on March 15, 1954, his amended and suuplemental petition for authority to sell all the real and personal property of the estate, except cash and cash accumulations, to R. T. Colter and Robbie E. Colter his wife, as joint tenants, for $350,564.15 without any conditions, and on April 5, 1954, the bankrupt corporation and Mrs. F. P. New-

port, Matilda Olsen, Martha T. MacMillan by Fay MacMillen Pender her attorney in fact, Dorothy Day, Eugene P. Clark and Addie E. Hurlburt Garland, creditors of the bankrupt estate, having filed objections to such proposed sale, and ten days notice of the time and place of the hearing of the said amended and supplemental petition and of the proposed sale having been given to the creditors pursuant to the provisions of Section 58a(4) of the Bankruptcy Act, and the undersigned Referee in Bankruptcy, Reuben G. Hunt, having taken over this matter at the request of Referee in Bankruptcy, Hugh L. Dickson, pursuant to Bankruptcy Rule 207a of this Court, and hearings having been had before the undersigned Referee on April 6, 7, 8 and 9, 1954, upon the said petition and the objections thereto, and the following appearances having been made: Paul W. Sampsell, Trustee: Bailie, Turner, Lake & Sprague by Norman A. Bailie, Esq., and George Bouchard, Esq. Tax Counsel for said Trustee; Edmund Nelson, Esq. and Winfield Jones, Esq. attorneys for Bank of America, a creditor; L. M. Cahill, Esq., attorney for Objectors; Aaron Levinson, Esq. attorney for Aaron Levinson and Louis Schulman, creditors; Wm. H. Neblett, Esq. attorney for R. T. Colter and Robbie E. Colter his wife, as joint tenants, bidders; Messrs. Flint & MacKay, attorneys for Los Angeles Investment Company, a creditor; and oral and documentary evidence having been received upon said hearing and other bids for the property having been received and entertained, and oral and documentary evidence having been received respecting the issues raised by the said petition and the objections

thereto; and the matter having been submitted to the Referee for decision,

The Referee hereby makes the following:

FINDINGS OF FACT

I

This is an involuntary bankruptcy proceeding commenced March 10, 1935. On March 25, 1935, the Court appointed and qualified H. F. Metcalf, as Receiver in Bankruptcy. An adjudication in bankruptcy was made on January 12, 1937, and the case referred for administration to Ernest R. Utley, a Referee in Bankruptcy of the Court. On February 28, 1945, the case was transferred to Referee in Bankruptcy Hugh L. Dickson of this Court, who is still in charge of the administration of the estate. The bankrupt's schedules were filed February 5, 1937. The assets of the estate consisted principally of real estate in the Los Angeles and Long Beach areas, oil produced from wells at Long Beach, and a small tract of land in Tulare County, California. The Security-First National Bank of Los Angeles held most of these properties under a trust agreement as security for loans and advances amounting to over a million dollars. On February 25, 1937, H. F. Laugharn was appointed and qualified as Trustee in Bankruptcy by Referee Utley. This appointment, however, was disaffirmed and set aside on March 18, 1937, by Judge McCormick of the above entitled Court who declared H. F.Metcalf to be the duly elected Trustee in Bankruptcy. This order

of Judge McCormick was affirmed on appeal. (*In Re F. P. Newport Corp.,* CCA 9, 35 ABR N.S. 391, 93 F. (2) 630.) H. F. Metcalf duly qualified as Trustee and acted as such until shortly before November 20, 1950, when Paul W. Sampsell, the present Trustee, was appointed and qualified as Trustee in his place and stead.

Trustees Metcalf and Sampsell, respectively, operated the bankrupt's business, with the permission of the Court (B. A. Sec. 2a(5), until May 26, 1952, when an order of liquidation was entered by Referee Dickson, which order was confirmed on review by Judge McCormick on November 28, 1952. The petition for that review was filed and prosecuted by the bankrupt and the same creditors who are the objectors upon the present proposed sale. The order of Referee Dickson, so confirmed, directed the Trustee:

> " . . . to proceed with all due diligence to sell the assets of said estate . . . to the end that the assets of said estate may be speedily converted into money, the expenses of administration paid, the residue paid to the creditors as required by law and the estate closed."

II

Trustees Metcalf and Sampsell, respectively, engaged in the business of leasing oil properties, inspecting their operation, and collecting various kinds of income therefrom. While operating that business they paid federal and state income taxes. See *U. S. v. Metcalf,* CCA. 9, 51 ABR, NS 727, 131 F. (2) 677.

During such operation the obligation due the Security-First National Bank of Los Angeles was satisfied and discharged and various small portions of the real properties of the estate were sold. A history of the administration of the estate is contained in the reports and accounts filed by the Receiver and Trustee Metcalf and by Trustee Sampsell.

III

On February 11, 1953, A. S. Menick, an appraiser appointed by the Court, filed his appraisement of certain personal property of the estate, consisting of office furniture and fixtures, which he appraised at $575.00.

On September 21, 1953, A. A. Carrey, a similar court appraiser, filed his appraisement of oil royalties growing out of land owned by the estate at Long Beach, his appraisement totalling $95,650.00.

On November 19, 1953, A. S. Menick and H. A. Sheedy, similar court appraisers, filed their appraisement dated November 17, 1953, of a parcel of land in Tulare County, California, at $7,500; acreage in the Verdugo Woodlands Tract in the City of Glendale at $370,505.00 and real estate at Long Beach, out of a portion of which the oil royalties arose, at $130,680.00. The latter named appraisers filed on April 12, 1954, a reappraisement of such properties but reported that in their opinion the values they originally reported were unchanged by the lapse of time, except that the appraisal of $130,680.00 for Parcel 24 (Long Beach oil property) of their appraisal of November 17, 1953, could be decreased by possibly 25% due to land sub-

sidence in the Long Beach area and nonuse of the surface rights until after 1963.

The total of all of said appraisements, to wit, $604,910 may well be reduced to $548,259.29 by reason of an interim sale of one lot at Long Beach (Parcel No. 17 appraised at $2500 in the Menick-Sheedy appraisement) by Trustee Sampsell, the collection of $21,480.71 by him of oil royalties since the Carrey appraisement was filed, and a 25% reduction of the Long Beach oil property appraisement of $130,680.00 to $98,010 by reason of continued land subsidence in that vicinity and the inability of a purchaser to use the surface rights until 1963.

The assessed values of the real properties of the estate for the fiscal year 1953-54 was $104,010.00.

IV

On November 3, 1953, Trustee Sampsell filed his petition for authority to sell and for confirmation of sale of real and personal property to R. T. Colter, a married man. This included the remaining assets of the estate, real and personal, except cash on hand. The bid of R. T. Colter contained a condition to the effect that he was to have the benefit of all cash received by the Trustee after August 18, 1953. On November 20, 1953, the bankrupt and the following general unsecured creditors of the bankrupt estate, Mrs. F. P. Newport, Matilda Olsen, Martha T. MacMillen by Fay MacMillen Pender her attorney in fact, Dorothy Day, Eugene P. Clark and Addie E. Hurlburt Garland, the same parties who objected to the liquidation order,

filed objections to that proposed sale. A hearing on the said petition for sale was held before said Referee Hugh L. Dickson. On November 23, 1953, after due notice of the time and place of the said hearing and of the proposed sale had been given to the creditors of the bankrupt by mail, pursuant to the provisions of Section 58a(4) of the National Bankruptcy Act. On December 9, 1953, Referee Dickson entered his findings of fact, conclusions of law and order confirming said proposed sale of November 3, 1953. On December 18, 1953, the same objectors filed their petition for a review of that order. This review was heard by Judge McCormick of the above entitled Court on January 19, 1954, and January 29, 1954. On February 9, 1954, Judge McCormick entered an order which neither reversed nor affirmed the Referee's order of confirmation, but recommitted the proceeding to the Referee to conduct a further formal hearing and endeavor to procure a "firm, positive, definite and certain bid" for the property.

V

At the hearings before the undersigned Referee there was active competitive bidding for the property as a whole between William Berk, E. P. Snyder and the Colters, the latter presenting the highest and final bid of $407,000.00. The next was that of E. P. Snyder for $406,500.00. These bidders all qualified as to their financial responsibility to carry out any accepted bid. This final bid of the Colters was without condition. The only bids for separate parcels were those (1) of M. B. Glenn of $5,000 for certain lots in the Verdugo

Woodlands Tract, out of which he wanted a 5% realtor's commission; (2) of H. W. Williams of $5,000 for the Tulare County property; and (3) of D. P. Harlow who dealt in oil royalties, of $150,000 for the Long Beach royalties, with the condition that they be delivered to him in the near future. With respect to this last named bid, it was not specified therein what "near future" meant, nor was any evidence presented to show that the bid was bona fide, or that D. P. Harlow was financially able to respond if his bid was accepted. No other bids for separate parcels are available.

VI

It was agreed by the parties, with the approval of the undersigned Referee, that the date of the confirmation of a sale by the Referee's signed and final order would be the line of cleavage so far as subsequent income was received by the Trustee from the oil royalties, in the event the order of confirmation did not become final for a future period owing to reviews and appeals. The Trustee accepted the final bid of the Colters of $407,000.00 for the property as a whole, except cash and cash accumulations, and recommended its confirmation. Thereupon, the Colters paid the Trustee $40,700 as a guarantee that they would pay him the balance of $356,300 on confirmation.

VII

The amount of general allowed claim against the bankrupt estate is the sum of $187,906.84. There are $750 in priority labor claims also to be paid. The

total unsecured claims, general and priority, is thus $188,656.84. On January 7, 1954, the U. S. Government filed a deficiency claim for income taxes in the sum of $11,970.13. On March 24, 1954, Referee Dickson disallowed this claim. The time within which may be filed a petition to review his said order has not yet expired.

VIII

On January 19, 1954, the bankrupt corporation filed herein a petition for reorganization under Chap-X of the Bankruptcy Act. This petition was dismissed by the above entitled Court on April 20, 1954, pursuant to Bankruptcy Rule 218b of this Court.

IX

The new and final offer of $407,000.00 of R. T. Colter and Robbie E. Colter his wife, as joint tenants, is without condition, and is not substantially or at all the same offer as that presented by R. T. Colter through Trustee Sampsell on November 3, 1953. It constitutes a firm, definite, positive and certain bid in accordance with the order of Judge McCormick on February 9, 1954. The value of the properties of the estate as reported by the Court appraisers and as modified down to date, to wit, $548,259.29 is a fair value. The final bid of the Colters of $407,000.00 being approximately 75% of such appraised valuation is the fair market value and is not inadequate, and is not so disproportionate to the appraised value as would warrant a rejection of such a bid.

X

The values of the Verdugo Woodlands acreage have not greatly or at all increased since the court appraisement thereof.

XI

Separate, firm, unconditional, adequate cash bids cannot be obtained for the separate parcels of the estate which, in the aggregate, will exceed the said bid of $407,000 for the property as a whole, except cash and cash accumulation.

XII

The real and personal property proposed to be sold by the Trustee does not have a fair market value of $800,000 or any other sum in excess of $407,000. More than $407,000 for the property as a whole, or for separate parcels in the aggregate, cannot be obtained within a reasonable time.

XIII

It is for the best interests of the bankrupt estate, and its creditors, that this new and final bid of the Colters for $407,000.00 accepted and recommended by the Trustee for confirmation, be confirmed by the Court.

XIV

The real and personal property now proposed to be sold by the Trustee has been sufficiently advertised. The Court did not direct any particular kind of advertising, or any advertising at all. The Trustee has made

diligent efforts to sell the said real and personal property, either in separate parcels or as a whole. Even if the advertisements of the proposed sale by the Trustee were defective, still the final bid of the Colters for $407,000 is fair and adequate, and the best price that can be obtained under the circumstances.

XV

No evidence was produced to the effect that any financially substantial person is willing to advance money to the bankrupt corporation to pay expenses of administration and creditors claims in full, plus interest. The objectors have had ample opportunity to produce persons who will pay cash for all or any of the properties of the bankrupt estate.

XVI

The confirmation of this present bid of the Colters will result in the payment of the balance of expenses of administration and the payment to the unsecured creditors of the principal and a large part, if not all, of interest on their claims. Simple interest on these claims at 7% per annum, the rate of judgments in California State Courts, is $250,913.59.

From the foregoing Findings of Fact the Referee makes the following:

CONCLUSIONS OF LAW

I

The Referee has jurisdiction to hear and determine the said amended and supplemental petition of the Trustee, but it is necessary, in order to clear the record, that the confirmation of the original bid of R. T. Colter made by Referee Dickson be vacated and set aside.

II

Each and all of the objections advanced by the objecting creditors of the bankrupt are without merit and should be overruled.

III

The present offer of the Colters in the sum of $407,000.00 for all of the assets of the estate, except cash and cash accumulations, should be confirmed.

IV

The objecting creditors should be required to pay the cost of this particular proceeding.

From the foregoing Findings of Fact, and Conclusions of Law, It is hereby Ordered as follows:

ORDER

I

The previous order of Referee Dickson on December 9, 1953, confirming the original bid of R. T. Colter is hereby vacated and set aside.

II

The proposed sale of all of the real and personal property of this bankrupt estate, except cash and cash accumulations, to R. T. Colter and Robbie E. Colter his wife, as joint tenants, for the sum of $407,000.00 be and the same is hereby confirmed.

III

Costs of this proceeding shall be taxed jointly against the objecting creditors by the Referee on two days notice pursuant to Federal Rule of Civil Procedure 54(d).

IV

Upon the full payment to Trustee Sampsell of the said sum of $407,000.00, the said Trustee shall execute and deliver to R. T. Colter and Robbie E. Colter his wife, as joint tenants, the following:

(a) A good and sufficient deed to the right, title and interest of the bankrupt estate in and to the real properties situate in the County of Los Angeles, State of California, designated herein as parcels 1-17 inclusive, and 19-24 inclusive, and described as follows:

All that real property in the County of Los Angeles, State of California, described as follows:

PARCEL 1.

That portion of the Rancho Los Cerritos, in the City of Long Beach, described as follows:

Beginning at the most southwesterly corner of the land described in the deed to the Title Insurance and Trust Company, recorded in Book 5577, Page 105 of Deeds, records of said county, in the northwesterly line of Channel No. 3, Long Beach Harbor; thence along said Northwesterly line, South 64° 42′ 30″ West 250 feet; thence North 19° 42′ 30″ East 738.08 feet; thence North 64° 42′ 30″ East 250 feet to the most northwesterly corner of the land described in said deed to Title Insurance and Trust Company; thence along the northwesterly line of said land so described, South 19° 42′ 30″ West 738.08 feet to the point of beginning.

EXCEPTING and portion of said land, which at any time was tide land, which was not formed by the deposit of alluvion from natural causes and by imperceptible degrees.

NOTE: In Book 1, Page 10 of the County Recorder's assessment maps, is the record of a map filed February 9, 1917, made by the City Engineer of the City of Long Beach for local assessment purposes only, upon which map the above described property is designated as Lot 18.

THOSE LOTS and portions of lots in Tract No. 250, in the City of Glendale, as per map recorded in Book 15, Pages 130 and 131 of Maps, in the office of the County Recorder of said County described as follows:

PARCEL 2.

Lot 179½ of said Tract No. 250.

EXCEPTING the northerly 135 feet of said lot,

ALSO EXCEPTING that portion of the remainder of said lot included within the following boundaries:

Beginning at the northwest corner of Lot 180½ of said Tract No. 250: thence along the northerly line of said lot, South 81° 16′ 15″ East 120 feet to the true point of beginning for this description; thence South 8° 43′ 45″ West 150.68 feet on a line parallel with the westerly line of said lot, and distant 120 feet, measured along the northerly line of said lot from the northwest corner thereof to its point of intersection with a curve having a radius of 91.01 feet, a radial line from said curve at said point of intersection bears South 13° 21′ 15″ East; thence northeasterly in a direct line to a point on a line drawn parallel with the westerly line of said Lot 179½ and distant 30 feet therefrom, measured along the northerly line of said lot from the northwest corner thereof, said point on said parallel line being South 8° 43′ 45″ West 135 feet from the northerly line of said lot; thence along said line parallel with the westerly line of said lot 179½, North 8° 43′ 45″ East 135 feet to the northerly line of said lot; thence along the northerly line of said lots 179½ and 180½, North 81° 16′ 15″ West 60 feet to the point of beginning.

PARCEL 3.

Lot 180½ of said Tract No. 250.

EXCEPTING those portions of said lot described as follows:

Portion 1. Beginning at the northwest corner of said lot; thence along the westerly line of said lot, South 8° 43′ 45″ West 162.77 feet to a point on a curve concave southerly, having a radius of 66.91 feet, a radial line from said last mentioned point bears South 1° 12′ 15″ West; thence, easterly along said curve, 23.60 feet; thence South 68° 35′ 20″ East 37.69 feet to the point of beginning of a tangent curve concave northerly, having a radius of 44.16 feet; thence easterly along said curve, 36.57 feet; thence North 63° 57′ 40″ East 8.78 feet to the point of beginning of tangent curve southerly, having a radius of 91.01 feet; thence easterly along said curve, 20.15 feet to an intersection with a line drawn parallel with the westernly line of said lot, distant 120.00 feet, measured along the northerly line of said lot from the northwest corner thereof, a radial line from said curve at its point of intersection with the said parallel line bears South 13° 21′ 13″ East; thence North 8° 43′ 45″ East along said parallel line, 150.68 feet to the northerly line of said lot; thence along the northerly line of said lot, North 81° 16′ 15″ West 120.00 feet to the point of beginning.

Portion 2. Beginning at the northwest corner of said Lot 180½; thence along the northerly line of said lot, South 81° 16′ 15″ East 120 feet to the true point of beginning for this description; thence South 8° 43′ 45″ West 150.68 feet on a line parallel with the westerly line of said lot and distant 120 feet, measured along the northerly line of said lot from the northwest corner thereof to its point of intersection with a curve, having a radius of 91.01 feet, a radial line from said curve at said point of intersection bears South 13° 21′ 15″ East; thence

northeasterly in a direct line to a point on a line drawn parallel with the westerly line of said lot 179½, and distant 30 feet therefrom, measured along the northerly line of said lot from the northwest corner thereof, said point on said parallel line being South 8° 43′ 45″ West 135 feet from the with the westerly line of said lot and distant 120 parallel with the westerly line of said Lot 179½, North 8° 43′ 45″ East 135 feet to the northerly line of said Lot; thence along the northerly line of said Lots 179½ and 180½, North 81° 16′ 15″ West 60 feet to the point of beginning.

PARCEL 4.

Lot 181½ of said Tract No. 250.

EXCEPTING that portion of said lot described as follows:

Beginning at the northeast corner of Lot 181½; thence along the easterly line of said lot, South 8° 43′ 45″ West 162.77 feet to a point in tangent curve concave southerly, having a radius of 66.91 feet, radial line from said last mentioned point bears South 1° 12′ 15″ West; thence Westerly along said curve, 38.54 feet; thence South 58° 12′ 10″ West 21.05 feet to point of beginning of tangent curve concave northerly, and having a radius of 92.98 feet; thence westerly along said curve, 43.94 feet; thence South 85° 16′ 40″ West 10.71 feet to point of beginning of tangent curve northerly and having a radius of 103.83 feet; thence westerly along said curve, 20.30 feet to a point from which a radial line bears North 6° 28′ 55″ East; thence North 8° 43′ 45″ East parallel with the easterly line of said lot 181½, 216.95 feet to the northerly line

of said lot; thence South 81° 16' 15" East 120.00 feet to the point of beginning.

PARCEL 5.

All of Laurita Place, vacated, as shown on the map of said Tract No. 250.

PARCEL 6.

Lots 184, 186, 188 and 189, of said Tract No. 250.

PARCEL 7.

Lot 185 of said Tract No. 250.

EXCEPTING THAT portion of said lot lying northeasterly of a line drawn from the southwest corner of lot 178½ of said Tract No. 250 to the most westerly corner of lot 186 of said Tract.

PARCEL 8.

A fifty-foot easement for street or road purposes and installation and maintenance of public utilities over that portion of Lot 185 of said Tract No. 250, lying northeasterly of a line drawn from the southwest corner of lot 178½ to the most westerly corner of lot 186 of said Tract No. 250, and lying 25 feet on either side of the following described center line:

Beginning at a point in the south line of Colina Drive, distant thereon North 75° 50' West 39.38 feet from the northeast corner of said lot 185, said point being the beginning of a non-tangent curve concave to the northwest, having a radius of 566.50 feet, a radial line through said point having a bearing of North 47° 57' West; thence southwesterly along said curve, 175.79 feet, more or less, to a point in the southwest line of the above described

portion, distant thereon South 59° 11′ 25″ East 178.56 feet from the southwest corner of lot 178½ of said Tract No. 250, a radial line through said point bears North 30° 10′ 15″ West.

The side lines of said easement being prolonged or shortened to intersect the south line of Colina Drive and the southwesterly line of said described portion.

PARCEL 9.

Lot 190 of said Tract No. 250, and the south one-half of Colina Drive, vacated, adjacent thereto.

PARCEL 10.

Lot 191 of said Tract No. 250.

AND the westerly one-half of vacated portion of Colina Drive adjacent, except those portions thereof included within the lines of the following described parcel:

Beginning at the northwest corner of Lot 13, of Tract No. 250; thence along the prolongation of the north line of said Lot 13, South 88° 36′ West 52.98 feet; thence South 39° 07′ East 64.08 feet to the beginning of a curve concave to the southwest, having a radius of 285.47 feet; thence southeasterly along said curve, 49.49 feet to an angle point in the westerly line of said lot 13, distant North 29° 11′ West 54.21 feet from the southwest corner of said lot 13; thence northerly along the westerly line of said lot 13, 93.79 feet to the point of beginning.

PARCEL 11.

Lot 195 of said Tract No. 250.

EXCEPTING that portion of said lot described as follows:

Bounded on the south by the northerly lines of lots 5 and 6 of Tract No. 11274, as per map recorded in book 202 page 11 of Maps, records of said county; on the North by a line parallel with and distant northerly 75 feet, measured at right angles from said northerly line of lots 5 and 6; on the east by the northerly prolongation of the easterly line of lot 3 of said Tract No. 11274, and on the west by the northeasterly prolongation of that certain course in the northwesterly line of said lot 6, having a length of 178 feet.

PARCEL 12.

Lot 16 of Tract 2052, in the City of Los Angeles, as per map recorded in book 28 pages 67 and 68 of Maps, in the office of the county recorder of said county.

PARCEL 13.

Lots 43, 44 and 45 of Tract No. 6409, in the City of Glendale, as per map recorded in book 114, pages 3 and 4 of Maps, in the office of the county recorder of said county.

Those portions of Lots in Tract 7146, in the City of Glendale, as per map recorded in Book 76 page 15 of Maps, in the office of the county recorder of said county.

PARCEL 14.

That part of Lot 8 of said Tract No. 7146, described as follows:

Beginning at a point in the northerly line of said Lot 8, distant North 83° 51′ 10″ East 80.08 feet from the northwest corner of said lot 8; thence South 3° 09′ East parallel with the westerly line of said lot 8, 83.66 feet to a point on the southerly line of said lot; thence South 89° 39′ East along said southerly line, 19.81 feet to the point of beginning of a curve concave northwesterly and having a radius of 15 feet; thence northwesterly along said curve, a distance of 25.96 feet to a point in the easterly line of said lot; thence along the said easterly line, North 8° 49′ 10″ West 23.20 feet to an angle point in said easterly line; thence North 13° 31′ 20″ West 47.40 feet to the northeast corner of said lot; thence South 83° 51′ 10″ West 24.84 feet to the point of beginning.

PARCEL 15.

That part of Lot 9 of said Tract No. 7146, described as follows:

Beginning at the southeast corner of said Lot 9; thence South 85° 45′ 30″ West along the southerly line of said lot, 50.82 feet; thence North 3° 09′ West parallel with the westerly line of said lot, 108.92 feet to a point in the northerly line of said lot; thence South 89° 39′ East along said northerly line, 27.68 feet to the point of beginning of a curve concave southwesterly, having a radius of 15 feet; thence southeasterly along said curve, a distance of 21.16 feet to a point in the easterly line of said lot; thence South 8° 49′ 10″ East along said easterly line, 89.73 feet to the point of beginning of a curve concave westerly, and having a radius of 212.80 feet; thence southerly along

said curve, a distance of 3.50 feet to the point of beginning.

PARCEL 16.

That part of lot 12 of said Tract No. 7146, described as follows:

Beginning at a point in the northerly line of said lot, distant North 85° 45′ 30″ East 79.98 feet from the northwest corner of said lot; thence South 3° 09′ East parallel with the westerly line of said lot, 90.37 feet to a point in the southerly line of said lot, said point being situated on a curve concave southerly and having a radius of 145 feet, a radial line from said point bearing South 9° 36′ 09″ West; thence easterly along said curve, a distance of 20.85 feet to the point of beginning of a curve concave northerly, and having a radius of 15 feet, a radial line from said point bearing North 17° 49′ 20″ East; thence Easterly along said curve, a distance of 23.97 feet to a point in the easterly line of said lot, said point being the point of beginning of a curve concave westerly, and having a radius of 212.80 feet, a radial line from said point bearing North 73° 43′ 21″ West; thence northerly along said curve, a distance of 89.71 feet to the northeast corner of said lot; thence South 85° 45′ 30″ West 50.82 feet to the point of beginning.

PARCEL 17.

That part of Lot 13 of said Tract No. 7146, described as follows:

Beginning at a point on the southerly line of said lot, distant North 88° 36′ East 40 feet from the southwest corner of said lot; thence North 3° 09′ West parallel with the westerly line of said lot,

125.64 feet to a point in the northerly line of said lot, said point being situated on a curve concave southerly and having a radius of 115 feet, a radial line from said point bearing South 7° 09′ 33″ East; thence easterly along said curve, a distance of 47.84 feet to the point of beginning of a curve concave southwesterly and having a radius of 15 feet, a radial line from said point bearing South 16° 42′ 35″ West; thence southeasterly along said curve, a distance of 24.45 feet to a point in the easterly line of said lot; thence South 20° 05′ 45″ West along said easterly line, 108.24 feet to the southeast corner of said lot; thence South 88° 36′ West 13.03 feet to the point of beginning.

PARCEL 19.

That portion of the 3365.95 acre allotment of Maria Dolores Dominguez de Watson, in the Rancho San Pedro, City of Los Angeles, described as follows:

Beginning at the intersection of the northerly line of Grant Avenue (formerly Watson Alley) with the northerly prolongation of the west line of Block 10 of Dominguez Harbor Tract, recorded in book 12 pages 14 and 15 of Maps, in the office of the county recorder of said county; thence southerly along the prolongation and west line of said block 10 to the north line of the 50 foot right of way of the Southern Pacific Railroad; thence northwesterly along said north line to the west prolongation of said north line of Grant Avenue; thence easterly along said prolongation to the point of beginning.

EXCEPT that portion thereof, if any, included in drainage chennel of Nigger Slough.

ALSO EXCEPTING that portion described as follows:

Beginning at a point in the prolongation west of the north line of Grant Street, formerly Watson Alley (30 feet wide) as shown on map of the Dominguez Harbor Tract, recorded in Book 12 page 14 of Maps, records of said county, distant South 84° 42′ 22″ West 21.35 feet, measured along said prolonged line of Grant Street from the north prolongation of the west line of Block 10 of said Dominguez Harbor Tract; said point of beginning being a point in a curve concave southeast and having a radius of 914.37 feet, the tangent to said curve at said point bearng South 75° 36′ 50″ West; thence southwest along said curve, 243.76 feet to a point in the north line of the 50 foot right of way of the Southern Pacific Railroad, distant North 72° 13′ 38″ West 276.5 feet, more or less, measured along said north line from the south prolongation of the west line of said block 10 of Dominguez Harbor Tract; thence along the north line of said 50 foot right of way, North 72° 13′ 38″ West 90.43 feet to a point in a curve concave southeast, and having a radius of 982.88 feet the tangent to said curve bearing North 56° 46′ 16″ East; thence northeast along said curve 79.91 feet to a point in said prolongation west of the north line of Grant Street, distant South 84° 42′ 22″ West 265.27 feet, measured along said prolonged line from the north prolongation of the west line of said block 10 of Dominguez Harbor Tract; thence along said pro-

longed line of Grant Street, North 84° 42′ 22″ East 243.92 feet to the point of beginning.

PARCEL 20.

Block 22 of Selvas de Verdugo, in the City of Glendale, as per map recorded in Book 37, pages 77 to 83 inclusive of Maps, in the office of the County recorder of said county.

EXCEPT that portion deeded to the City of Glendale for street purposes to be known as Hillside Drive, by deed recorded in Book 5627 page 320 of Official Records.

PARCEL 21.

Lot 20, Block 25, and Lots 1 and 21, Block 26, of said Selvas de Verdugo, Sheet 8, in the City of Glendale, as per map recorded in book 44 page 64 of Maps, in the office of the county recorder of said county.

PARCEL 22.

Lots 2, 3, and 22, Block 42 of said Selvas de Verdugo, in the City of Glendale, as per map recorded in book 84 pages 99 and 100 of Maps, in the office of the county recorder of said county,

EXCEPT from said land that portion included in the 150 foot strip of land conveyed to Southern California Edison Company, a corporation, by deed recorded in book 4602 page 238 of Official Records.

ALSO EXCEPTING therefrom those portions of said land lying southwesterly of the southwesterly line of the 90 foot right of way of the Los Angeles County Flood Control District, as described

in Decree of Condemnation recorded February 24, 1952 in book 19124 page 278 of Official Records.

PARCEL 23.

Lots 16, 17 and 19, Block 43 of said Selvas de Verdugo, in the City of Glendale , as per map recorded in book 84 pages 99 and 100 of Maps, in the office of the county recorder of said county.

EXCEPT from said land that portion included in the 150 foot strip of land conveyed to Southern California Edison Company, a corporation, by deed recorded in book 4602 page 238 of Official Records.

ALSO EXCEPTING therefrom those portions of said land lying southwesterly of the southwesterly line of the 90 foot right of way of the Los Angeles County Flood Control District, as described in Decree of Condemnation recorded February 24, 1952 in book 19124 page 278 of Official Records.

PARCEL 24.

Lot 3 of the Verdugo Estate, in the City of Glendale, as per map recorded in Book 12 pages 34 and 35 of Maps, in the office of the county recorder of said county.

EXCEPT those portions described as follows:

Beginning at a point in the northerly boundary line of said Lot 3 of the Verdugo Estate, which point is distant South 88° 37′ West 43.54 feet along said northerly boundary from the easterly terminus of that certain course in said northerly boundary line shown on said above mentioned map as having a bearing of North 88° 37′ East and a length of 19.185 chains; thence from said point of

beginning, North 88° 37′ East 43.54 feet along the northerly boundary line of said Lot 3 to an angle point; thence South 62° 15′ East 577.50 feet along the northeasterly boundary line of said lot to the most easterly corner of said Lot 3; thence along the easterly boundary line of said Lot 3, the following five courses and distances; South 30° 54′ 20″ West 427.9 feet; South 6° 3′ 40″ West 901.96 feet; South 56° 32′ 25″ West 200.49 feet; South 0° 57′ 50′ West 264.60 feet, and South 29° 24′ West 135.36 feet; thence North 0° 02′ 55″ West 2023.95 feet, more or less, to the point of beginning.

ALSO EXCEPTING a strip of land 150 feet in width across said Lot 3 as conveyed to Southern California Edison Company by deed recorded in Book 4602, page 238 of Official Records.

(b) A good and sufficient deed to the right, title and interest of the bankrupt estate in and to the real property situate in the County of Tulare, State of California, described as follows:

That portion of the Southwest quarter of the Northwest quarter of Section Twelve (12) and of the north half of the Southwest quarter of Section 12, Township Twenty-three (23) South, Range Twenty-three (23) East, Mount Diablo Base and Meridian, according to the official plat of the survey of said land on file in the Bureau of Land Management at the date of the issuance of the Patent thereof, lying West of the Right of Way of the Atchison, Topeka and Santa Fe Railroad Right of Way

EXCEPT therefrom that portion thereof included within the following boundary: Commenc-

ing at the intersection of the South boundary of the Northwest quarter of said Section 12, with the Southwestern boundary of the Atchison, Topeka and Santa Fe Railroad Company's Right of Way as deeded in deed recorded in Book 83, Page 167 of Deeds; thence West along the South line of said Northwest quarter of said Section 12, 115.8 feet, more or less, to a point 100 feet at right angles Southwesterly from said Southwestern boundary of Right of Way; thence Northwesterly parallel with said Southwestern boundary of Right of Way 1000 feet; thence at right angles Northeasterly 100 feet to point on said Right of Way boundary; thence in a direct line along said Southwestern boundary of said Right of Way to point of commencement.

Each of the above described real properties is subject to: Conditions, restrictions, reservations, easements, rights, leases, rights of way, if any, of record and exceptions noted in the preliminary title reports attached to the Petition filed herein on November 3, 1953, marked Exhibits 2-17 inclusive and Exhibits 19-28 inclusive; taxes for the fiscal year 1953-54 to be prorated as of date of order confirming sale; and subject to taxes for fiscal year 1954-55, a lien but not yet payable.

(c) A good and sufficient Bill of Sale transferring to said R. T. COLTER and ROBBIE E. COLTER, his wife, as joint tenants, the right, title and interest of the bankrupt estate in and to personal property described as follows:

1—3 drawer letter size steel file

4—metal map cases — roller type

1—center drop typewriter desk — oak

9—Oak arm chairs

4—3 drawer letter size steel files
1—2 drawer — 2 cash drawers — letter size steel files
1—3 drawer — legal size — steel file
2—4 drawer — letter size steel files
1—14″ Underwood Typewriter — elite type
1—typewriter table — oak
1—oak-flat — linoleum top table
1—card file — desk type
1—oak table — filing
1—oak — roll top desk
1—oak desk — flat linoleum top
1—Monroe Calculator — hand type
1—Error-no (needs repairing)
1—Electric heater
1—oak — swivel chair
1—Typewriter chair — oak
1—oak map cabinet file — 8 drawers
1—oak — legal size — desk file
1—oak desk companion
1—6 drawer — 5″ x 8″ — Y & E file — oak
1—8 drawer — 6″ x 4″ — Y & E file — oak
1 drawer — letter size
1—telephone table — oak
1—oak — 4 drawer desk letter file
1—oak file — legal size
1—oak file — legal size
1—typewriter chair — oak
1—legal size — transfer drawer
1—2 drawer card file — oak — 3″ x 5″
1—oak map cabinet file

1—14 drawer file cabinet
1—oak costumer (hat tree)
1—oak — 7 drawer — desk letter file
(At Mr. Sampsell's warehouse or on consignment)
13—letter size steel transfer files
1—12 bank & date — Burroughs adding machine (out of order) (In storage at 3235 N. Verdugo Road, Glendale)
1—roll top desk — oak
1—flat top desk (from which rolltop has been removed)
2--smal desks — salesman type
1—director's table
1—gas heater
3—office arm chairs
1—swivel chair
(all golden oak finish)

(d) An assignment, without recourse or warranty, of the right, title and interest of the bankrupt estate in and to a certain oil and gas lease between Security-First National Bank of Los Angeles, F. P. Newport Corporation, Ltd., a corporation bankrupt, and H. F. Metcalf as Trustee in Bankruptcy of F. P. Newport Corporation, Ltd., Lessors, and Universal Consolidated Oil Company, a corporation, Lessee, dated January 14, 1938, and recorded February 14, 1938, in Book 15515 at Page 326 of Official Records of Los Angeles County, California; the right, title and interest of said Trustee in and to said lease being as set forth in the preliminary reports of Title Insurance and Trust Company attached to the Petition filed here-

in on November 3, 1953, and marked Exhibits 1a and 1b.

(e) An assignment, without recourse or warranty, of that certain promissory note dated April 23, 1953, in the principal sum of $1500 executed by Marie H. Little in favor of Paul W. Sampsell as Trustee in Bankruptcy of F. P. Newport Corporation, Ltd.

(f) An assignment of deed of trust from said Marie H. Little in favor of Title Insurance and Trust Company, as Trustee, given to secure payment of said $1500 note, which deed of trust was recorded on April 30, 1953, in Book 41605 at Pages 33 and 34 of Official Records of Los Angeles County, California.

V

Paul W. Sampsell, as Trustee, is hereby directed to pay out of the proceeds of said sale, when and as received, the cost of policies of title insurance, transfer taxes, seller's proportion of escrow fees, and other costs and expenses in connection with said sale.

Dated this 3rd day of May, 1954.

May

Dated this 3 day of ~~April,~~ 1954.

REUBEN G. GRANT

(Reuben G. Hunt)
Referee in Bankruptcy

APPROVED AS TO FORM this 26th day of April, 1954.

EDMUND NELSON and WINFIELD JONES
By EDMUND NELSON
Counsel for Bank of America
WM. H. NEBBLET
(Wm. H. Neblett)
Counsel for R. T. Colter and
Robbie E. Colter his wife,
as joint tenants.

APPENDIX B

[TITLE OF COURT AND CAUSE.]

FILED July 12, 1954.

EDMUND L. SMITH, Clerk.

By C. A. SIMMONS, Deputy Clerk.

ORDER AFFIRMING ORDER OF REFEREE CONFIRMING SALE OF REAL AND PERSONAL PROPERTY TO R. T. COLTER AND ROBBIE E. COLTER HIS WIFE AS JOINT TENANTS.

Honorable Reuben G. Hunt, Referee in Bankruptcy, having heretofore, on May 3, 1954, signed and filed his Order Confirming the Sale of the real and personal property belonging to said estate (exclusive of cash and cash accumulations) to R. T. Colter and Robbie E. Colter his wife, as joint tenants, for the sum of $407,000; and the bankrupt and certain unsecured creditors having filed herein their petition to the above entitled Court for the review of said Order; said review came on regularly to be heard before the Honorable Leon R. Yankwich Chief Judge of said Court on June 28, 1954, at 10 o'clock a. m., pursuant to notice of the time and place of said hearing duly and regularly given as provided by law.

The Trustee herein, Paul W. Sampsell, appeared in person and by his counsel Messrs. Bailie, Turner, Lake & Sprague by Norman A. Bailie, Esq., Bank of Amer-

ica National Trust and Savings Association, an unsecured creditors appeared by its counsel Edmund Nelson Esq., and / Winfield Jones Esq., and petitioners Attys appeared by their counsel, L. M. Cahill Esq. The Court being familiar with the record on review and having heard and considered the arguments of counsel, and being fully advised in the premises, makes and files his Order on said review as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the Findings heretofore made herein by the Referee are hereby adopted as the Findings of the Court.

2. That the Order of the Referee made and filed herein on May 3, 1954, Confirming the sale of the assets described in said Order to R. T. Colter and Robbie E. Colter his wife, as joint tenants, be and it is hereby affirmed.

Dated this 12th day of July, 1954.

LEON R. YANKWICH
Chief Judge
United States District Court

APPENDIX C

In re F. P. NEWPORT CORP., Limited.
No. 25308.

United States District Court,
S. D. California, Central Division.

July 6, 1954.

YANKWICH, Chief Judge.

The bankrupt and certain unsecured creditors seek to review an Order of the Referee dated May 3, 1954, confirming a sale of all the assets of the bankrupt, except certain cash, to R. T. Colter and Robbie E. Colter, his wife, as joint tenants for the sum of $407,000. Involved were 25 pieces of real property and some personal property and interests in a leasehold, deed of trust and promissory notes. The estate has been in court for over nineteen years. It began as an involuntary proceeding filed on March 19, 1935. An adjudication was made on January 12, 1937. Throughout the proceedings, it has been the attitude of the bankrupt that, *if given long enough time,* its difficulties could be worked out.

This review must be considered in the light of this attitude and against the background of a "protracted" administration, — as the Judge who handled it for many years characterized it. For it was the contention of the bankrupt at the conclusion of the hearing before the Referee on the Petition to Sell that, *at all times,*

matters could have been worked out differently. But the Referee correctly stated:

> "A bankrupt case is a lot different than where the property is in private hands. If the man has property in his own hands not subject to legal process or creditors' claims, he can wait indefinitely. But a bankrupt estate can't. *It is the creditors' funds and they are entitled to get paid sometime.* The only question here is haven't we come to the end of the trail? *How much longer are we going to put the creditors off, how much longer are they going to be put off before they get their money? If I had any evidence before me to show that you could within a reasonably short time—any definite evidence—get a better buyer, that would be an entirely different situation.*" (Page 586) (Emphasis added.)

Significantly, the two most recent acts in the bankruptcy proceeding, which occurred before the present Order of Sale, were opposed *upon the same nebulous ground that, as the condition of the estate is improving, additional time might bring better results.*

So we find that when there came before the Court the question of compromising a claim of Security First National Bank of Los Angeles, one of its largest creditors, the Court delayed confirmation from April 30, 1951, to October 2, 1951, in the hope that a better offer or a different solution would be found. To the Order confirming the Compromise, dated October 22, 1951, the Honorable Paul J. McCormick, a Judge of this

court of long experience, who, despite retirement, undertook the laborious task of continuing to act in this case, appended a statement to this effect:

> "It is to be observed that the court has since the submission of this review deferred decision for almost four months to accord all parties interested in this bankrupt estate to submit for consideration *a plan or method that is more beneficial and equitable to the estate than the compromise under review. None such has been presented or offered.*" (Emphasis added.)

A similar situation arose when the Court was confronted with the review of an Order of the Referee, dated May 26, 1952, ordering liquidation. Bankruptcy Act, § 2, sub. a(7), 11 U.S.C.A. § 11, sub. a(7). Judge McCormick kept the matter under submission from July 24, 1952, to November 28, 1952. His Order confirming the Order of Liquidation, which has now become final, contained the following statement:

> "Although thoroughly argued by the respective parties on the hearing and it appearing at that time to be warranted by the record and files of this protracted bankruptcy proceeding, it was believed by the Judge that if decision on the Referee's order of liquidation *were deferred for a reasonable period, some other lawfully-authorized equitable method of settlement would be forthcoming and duly proposed. Such other proceeding now seems to be unavailable.*" (Emphasis added.)

The present sale goes back to an Order of the Referee, dated December 9, 1953. On review being taken from it, the Court returned the matter to the Referee on January 29, 1954, with direction that he hold further proceedings towards making the conditions of the sale more definite. His direction was that

> ". . . counsel for Trustee, Norman Bailie, Esq. prepare, serve on other counsel, and present to the Court for approval and signature Order referring this matter to the Referee for the purposes of conducting a hearing and if possible obtaining a definite and positive and certain bid for the property; and if the present bidder desires to withdraw his deposit within ten days, he may do so, and if he does not, his bid may be considered when further proceedings are had before the referee." (Minute Order of January 19, 1954)

A formal Order was entered on February 9, 1954, which read:

> "It Is Hereby Ordered: That the proceeding for the sale of the assets of said bankrupt estate before the Court on review of the Order of the Referee in Bankruptcy, signed and filed on December 9, 1953, be and it is hereby re-referred to the Honorable Hugh L. Dickson, Referee in Bankruptcy, for the purpose of conducting *a further formal hearing in court pursuant to the Bankruptcy Act, and in such manner as his judgment and discretion shall warrant, and, if possible, obtaining a firm, definite, positive, certain bid for*

the property of the bankrupt estate." (Emphasis added.)

An amended and supplemental petition for authority to sell was filed on March 15, 1954. New notices were given. Objections were filed by the petitioners. Further proceedings were had, and, after bidding in open court, the property was sold to the Colters for the sum of $407,000. The hearing of objections before the Referee was extensive and the transcript covering 588 pages is before me. The Referee, on May 3, 1954, filed full Findings and confirmed the sale. In addition, the Referee set forth in a 37-page opinion the reasons why, in his opinion, the sale should be made in the particular manner and at the stated price. In it the objections of the bankrupt and certain unsecured creditors, who prosecute this review, are considered fully and answered.

We start with the accepted principle that even before the adoption of the Federal Rules of Civil Procedure and their application to bankruptcy, it was the law of this Circuit that the Findings of a Referee on conflicting evidence would not be disturbed. See, *Weisstein Bros. & Survol v. Laugharn,* 9 Cir., 1936, 84 F. 2d 419, 420. The Federal Rules of Civil Procedure and the General Bankruptcy Orders, 11 U.S.C.A. following section 53, now provide that the Findings of a Referee shall not be overturned unless they are "clearly erroneous". Federal Rules of Civil Procedure, Rules 52 (a), 53(c) (2), 28 U.S.C.A.; General Bankruptcy

Orders 36, 47; *Diamond Laundry Corp. v. California Empl. Stab. Comm.*, 9 Cir., 1947, 162 F. 2d 398, 401; *Ashton v. Sentney*, 9 Cir., 1944, 145 F. 2d 719, 720; *McInnes v. Publishers' Service Co.*, 2 Cir., 1949, 174 F. 2d 647; 648; *Knetzer v. Larkin*, 2 Cir., 1949, 178 F. 2d 532, 534. And see the writer's opinion in Re Christ's Church of the Golden Rule, D. C. Cal. 1948, 79 F. Supp. 42.

The chief grounds urged are that the sale is below the official appraisal, and that the Referee ordered the sale of all the estate in bulk rather than segregating the properties and selling them separately. The Referee heard evidence as to the present value of the property. And we know of no rule or practice that would warrant the Court in setting aside the Order of the Referee where he uses his best judgment both as to the method of sale and as to the sufficiency of the price at which the sale was made.

Mere inadequacy of price is not a ground for setting aside a sale in equity. See, *Webster v. Barnes Banking Co.*, 10 Cir., 1040, 113 F. 2d 1003, 1005; *Gelfert v. National City Bank*, 1941, 313 U. S. 221, 232, 61 S. Ct. 898, 85 L. Ed. 1299; *Allen v. Union Transfer Co.*, 10 Cir., 1945, 152 F. 2d 633, 635. Numerous instances exist in bankruptcy where actual values,—that is, *values in the market place*,—are far below the appraised value, and the Referee must be left free to use his judgment in determining whether a sale at a better price could be obtained. *The objectors produced no better buyer.*

In the present case the Referee estimated that the Colter bid was about 75 per cent of the "adjusted appraisement". (See, Supplement to Memorandum Opinion, dated April 28, 1954.) None of the other points urged by the bankrupt against the validity of the sale have merit. The Referee had jurisdiction to hear the matter. Adequate notice of the proposed sale was given. Objections were filed. Opportunity was afforded to increase the bid, and, on the hearing of objections to confirmation, the Referee very painstakingly heard evidence as to matters put in question both as to the method of sale and price, and the hopes of the bankrupt that further delay might bring more to the estate than the instant sale.

In view of what precedes, it is quite evident that unless we find some legal principle in the light of which the action of the Referee is illegal, or that he drew erroneous conclusions from admitted facts, the Order must be affirmed. See *In re Christ's Church of the Golden Rule,* D. C. Cal. 1948, 79 F. Supp. 42; *In re Eastern Oil Co.,* 9 Cir., 1938, 100 F. 2d 341; *Carr v. Southern Pacific Co.,* 9 Cir., 1942, 128 F. 2d 764, 768; *Knetzer v. Larkin, supra.* And see, the opinion of *Judge Carter in Re Ward Mfg. Co.,* D. C. Cal. 1950, 89 F. Supp. 500. The objectors have pointed to no such legal principles. As stated, the Referee had jurisdiction to make the sale. He held further hearings as directed by Judge McCormick and secured a better price and more definite terms. The contention that it is still possible to reorganize the corporation is illusory. No. valid

plan of reorganization has been proposed during the course of this long administration. And the Referee, having ordered liquidation on May 26, 1952, an Order which has been affirmed by this court, and *has become final,* this Court is not in a position, at the present time, to undo *the finality of that act* and start once more the laborious process of attempting to reorganize the bankrupt estate after a nineteen years "protracted" bankruptcy proceeding. The Referee found specifically that the objectors have not produced any substantial person willing to advance the moneys to liquidate the estate in any other manner and that the sale of all the assets was the only alternative. (See, Findings XIV-XVI.) More, it would be a bad precedent to establish in bankruptcy for a court *at this late date* to undo the work of Referees and members of this Court who have worked long and diligently over the course of years in administering a bankrupt estate, and finally determined upon a method of terminating the long gestation of this bankrupt in bankruptcy. After all, even bankruptcy proceedings should terminate some time. That the stockholders will receive nothing is one of the inevitable incidences of investing in a corporation which fails ultimately. And the chief concern of the bankruptcy court is the creditor. For the main object of bankruptcy is to secure the equitable distribution of the bankrupt's estate among his creditors and discharge him of his debts. See, *Wilson v. City Bank of St. Paul,* 1873, 17 Wall. 473, 480, 21 L. Ed. 723; *Straton v. New,* 1931, 283 U. S. 318, 320-321, 51 S. Ct. 465, 75 L. Ed. 1060.

The Referee was also right in allowing interest to the unsecured creditors. In all liquidations, whether under bankruptcy or other statutes, if there be a surplus in the estate, interest is allowed on unsecured claims. See, *In re John Osborn's Sons & Co., Inc.,* 2 Cir., 1910, 177 F. 184, 29 L.R.A., N.S., 887; *Johnson v. Norris,* 5 Cir., 1911, 190 F. 459, 463—465, L.R.A. 1915B, 884; *American Iron & Steel Mfg. Co. v. Seabard Air Line Ry.,* 1914, 233 U. S. 261, 34 S. Ct. 502, 58 L. Ed. 949; *Federal Deposit Ins. Corp. v. Citizens State Bank of Niangua,* 8 Cir. 1942, 130 F. 2d 102; *Ticonic Nat. Bank v. Sprague,* 1938, 303 U. S. 406, 410-411, 58 S. Ct. 612, 82 L. Ed. 926; *Fujikawa v. Sunrise Soda Water Works Co.,* 9 Cir., 1946, 158 F. 2d 490, 494-495; *Hightstown Rug Co. v. National Savings and Trust Co.,* 1947, 82 U. S. App. D. C. 204, 162 F. 2d 10.

The theory behind the cases is that regardless of any direct agreement, interest is due the creditor the moment his debt becomes due and is not paid. If the estate, whether in bankruptcy, receivership, or statutory liquidation, is insolvent, the interest, although it runs during the period when the assets are insufficient to pay the principal of the claims, will not be paid. But if there is a surplus, interest will be paid. And this rule applies whether the liquidation is brought about by the voluntary act of the debtor or by the act of creditors or statutory liquidating authorities. The objection to interest reveals once more the inconsistency in the attitude of the bankrupt in this case. On the one hand, after it has succeeded in keeping the

estate in court for nearly twenty years, it still insists that the period should be extended further and the sale of all the remaining assets be denied approved by the Court. Yet it would deny to its unsecured creditors the right to receive interest during the long period of this administration. One does not have the right to do business at the expense of one's creditors. And where the creditors have been denied the right to receive their principal debt when due, and through good management or good fortune, a surplus exists, it is more consonant with the equitable principles of bankruptcy that the surplus be used to pay interest to the creditors rather than that it be turned over to the bankrupt.

The Findings of the Referee are hereby approved and adopted as the Findings of this Court and the Order of the Referee Confirming the Sale is affirmed. Formal Order to follow.

APR 18 1955
HAROLD B. WILLEY, CL

No. 590

IN THE

SUPREME COURT

OF THE

United States

October Term, 1954

F. P. NEWPORT CORPORATION, LTD.,
Petitioner,

vs.

PAUL W. SAMPSELL, Trustee in Bankruptcy of the Estate of F. P. NEWPORT CORPORATION, LTD., et al.,
Respondent.

PETITION FOR REHEARING

MOTION TO REMAND THE CASE TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MORRIS LAVINE
215 W. 7th Street
Los Angeles 14, California
Attorney for Petitioner.

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IN THE

SUPREME COURT

OF THE

United States

October Term, 1954

F. P. NEWPORT CORPORATION, LTD., *Petitioner,* vs. PAUL W. SAMPSELL, Trustee in Bankruptcy of the Estate of F. P. NEWPORT CORPORATION, LTD., et al., *Respondent.*	No. 590

MOTION TO REMAND THE CASE TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

COMES NOW F. P. NEWPORT CORPORATION, LTD., petitioner and moves this Honorable Court to grant certiorari, vacate the judgment of the United States Court of Appeals for the Ninth Circuit, and remand the case to the Ninth Circuit for hearing of the case on its merits.

The Referee in Bankruptcy and United States District Court each heard the case on its merits. Section

23 of the Bankruptcy Act, Title 11, provides for the jurisdiction of District Courts to hear proceedings in Bankruptcy.

Section 24 of the Bankruptcy Act, Title 11, Chapter 4, §47, grants jurisdiction on appeal to the Circuit Courts of Appeals for the United States to hear proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in Bankruptcy to review, affirm, revise or reverse both in matters of law and in fact. The cause was a proceeding in bankruptcy heard on its merits in the United States District Court.

This motion is based upon the authority of Section 24 of the Bankruptcy Act, and all the records and files of the case.

Respectfully submitted,

Morris Lavine
Attorney for the Petitioner

IN THE

SUPREME COURT

OF THE

United States

October Term, 1954

F. P. NEWPORT CORPORATION, LTD., *Petitioner,* vs. PAUL W. SAMPSELL, Trustee in Bankruptcy of the Estate of F. P. NEWPORT CORPORATION, LTD., et al., *Respondent.*	No. 590

PETITION FOR REHEARING

To the Honorable Chief Justice Earl Warren, and the Honorable Associate Justices of the Supreme Court of the United States:

Your Petitioner, the F. P. NEWPORT CORPORATION, LTD., respectfully petitions for a rehearing of the Order of this Honorable Court denying certiorari to the petitioner and for a further order to remand the case to the United States Court of Appeals for the Ninth Circuit, for hearing of the appeal on its

merits, and in respect thereto your Petitioner respectfully sets out as follows:

(1) The Court in denying certiorari denied the petitioner a substantial right of appeal from the decision of the United States District Court on the merits of his case in the Bankruptcy proceeding.

(2) There has been an increase in the membership of the Court by the addition of a new justice since the original Petition for Certiorari was filed and petitioner may not have had four votes for certiorari, but may have with the addition of a new member of this court.

(3) This Court should re-examine the Petition to determine if the petitioner should not have his "day in court" in the Court of Appeals for the Ninth Circuit and if the case should not be remanded to the United States Court of Appeals for the Ninth Circuit for hearing of the case on its merits.

The petitioner here, the corporation, was thrown into involuntary bankruptcy during the depression years following 1933. At that time the corporation was one of the largest real estate operating corporations in Southern California. It owed in excess of two million dollars, particularly to the Security First National Bank of the City of Los Angeles.

Through careful operation through the years, with the permission of the Bankruptcy Court and thereunder a California franchise tax, but without paying that of Delaware, that two million dollars was paid off,

as shown by Appendix B in the original petition, and the only amount of indebtedness left to the unsecured creditors was the sum of $187,000.00.

After the payment of the larger sum and only leaving a small group of unsecured creditors who have not received the monies referred to, the Referee in Bankruptcy ordered the assets liquidated and a sale has been negotiated of those assets in the sum of $407,000.00.

The Referee not only approved the sale of $407,000.00 but approved of the payment of interest to the unsecured creditors, which interest he proposes to run back to 1935 and thus give the unsecured creditors approximately 135% interest, or distribute approximately $250,000.00 in interest, whereas the total amount of the claims themselves are only $187,00.00.

Under California law interest is only payable on judgments after their rendition. It is the position of petitioner that even if interest is allowable, it is only allowable from the date claims in bankruptcy are approved. The claims were not heard or approved until 1952. This would leave a substantial balance to petitioner. But the Referee has dated the interest back to 1935. This raises an important question of bankruptcy law never decided by this Honorable Court but which should be. Like a lawsuit or judgment in court, no interest is or should be payable until a judgment is rendered and if bankruptcy law must follow the law of the state of California, under the doctrine of *Erie v. Tompkins,* then under the law of the State of Cali-

fornia the interest would *only* run from the date of the judgment.

The date of an allowance of the claim, after hearing thereon by the Referee, would be analogous to the date when a judgment had been rendered in a lawsuit and interest should not date from any other date. If this is the proper construction of the law, then the petitioner, the bankrupt herein, would have approximately $200,000.00 or more coming back to it and after the payment in full of the claims of the unsecured creditors, and he should have his day in court on this issue.

The United States District Court reviewed the Referee's finding and opinion on this matter on the merits. The United States Court of Appeals, however, declined to consider the case on appeal on its *merits,* and only heard it on a Motion to Dismiss.

We respectfully submit that this was a denial of rights which Congress intended this appellant to have, and that this Court should grant a rehearing and reverse the order of the United States Court of Appeals and remand the case to the United States Court of Appeals for the Ninth Circuit for hearing on the merits of the order and judgment of the District Court, particularly with reference to this matter of interest. We submit that this very important question has been overlooked by this Honorable Court, and we therefore respectfully petition for rehearing and for a remand of the case to the United States Court of Appeals.

We did not ask for remanding the case in our original Petition, when we perhaps should have done so,

but in any event we do now ask that the case be remanded. Since the filing of the original petition another member has been added to the Court. We have no way of knowing how many justices voted for the original petition, and we know that it takes at least four judges to have a petition granted. Therefore, we ask the Court and the new member to re-examine the former petition and point in argument and motion herein made.

WHEREFORE, your Petitioner prays that this Honorable Court grant a rehearing of its Petition and reverse its previous order and remand the case to the United States Court of Appeals for the Ninth Circuit for hearing on its merits.

Morris Lavine
Attorney for Petitioner.

CERTIFICATE OF COUNSEL

MORRIS LAVINE, attorney for petitioner, asserts that the foregoing Petition is filed in good faith and not for the purposes of delay, and that it is based upon occurrences since the filing of the original petition, and raises a substantial question in the law of bankruptcy which has not been, but should be decided by this Honorable Court.

Morris Lavine
Attorney for Petitioner